IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 5765 of 2007(J)

AGAINST THE ORDER IN EP 151 2000 IN ARC.877/1997 of MUNSIFF COURT, QUILANDY

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PETITIONERS:

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1. **V.RAMAN, S/O. KUNHICHEKKAN, VARAPURATH, ARIKKULAM, QUILANDY.**

2. **V.K.RAVI, VARAKKANDI HOUSE, ARIKKULAM, QUILANDY.**

3. **P.NARAYANAN, POST URALUR, VAKAMOLI DESOM, QUILANDY.**

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENT:

ARIKKULAM SERVICE CO-OPERATIVE BANK, REPRESENTED BY ITS SECRETARY, ARIKKULAM, QUILANDY.

BY ADV. SRI.B.V.JOY SANKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007 ALONG WITH WPC.NO.6537 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.5765/2007 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF CIRCULAR NO.59/2006 DTD. 30/11/2006.**

EXT.P2: **COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) 4561/2004 DTD. 23/05/2006.**

EXT.P3: **COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE RESPONDENT DTD. 22/06/2006.**

EXT.P4: **COPY OF APPLICATION SUBMITTED BY THE 1ST PETITIONER TO THE RESPONDENT BY REGISTERED POST DTD. 11/08/2006.**

EXT.P5: **COPY OF THE APPLICATION SUBMITTED BY JANAKI AND OTHERS BEFORE THE RESPONDENT DTD. 17/08/2006.**

EXT.P6: **COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT IN RESPECT OF E.P.NO.151/2000 DTD. 24/08/2006.**

EXT.P7: **COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT IN RESPECT OF E.P.NO.177/2002 DTD. 24/08/2006.**

EXT.P8: **COPY OF CIRCULAR NO.27/2006 DTD. 29/06/2006.**

EXT.P9: **COPY OF THE REPRESENTATION/OBJECTIONS SENT BY JANAKI TO THE RESPONDENT DTD. 2/09/2006.**

EXT.P9(A): **COPY OF THE REPRESENTATION/OBJECTIONS SENT BY PETITIONERS TO THE RESPONDENT DTD. 2/09/2006.**

EXT.P10: **COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.321 OF 2007 DTD. 3/01/2007.**

EXT.P11: **COPY OF THE ORDER OF MUNSIFF COURT, KOYILANDY IN E.P.NO.151/2000 DTD. 1/12/2006.**

EXT.P11(A): **COPY OF THE ORDER OF MUNSIFF COURT, KOYILANDY IN E.P.NO.177/2002 DTD. 1/12/2006.**

EXT.P12: **COPY OF THE E.P.AND PROCEEDINGS OF MUNSIFF COURT, KOYILANDY IN E.P.NO.151/2000 DTD. NIL.**

EXT.P12(A): **COPY OF THE E.P. AND PROCEEDINGS OF MUNSIFF COURT, KOYILANDY IN E.P.NO.177/2002 DTD. NIL.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NOs. 5765 &
6537 OF 2007

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Dated this the 27th day of September, 2007.

J U D G M E N T

WPC 5765 of 2007 is filed against the order in E.P.151/00 in ARC 877 of 1997-98 and the other writ petition is filed against the order in E.P.177/02 in ARC 895 of 1997-98. The learned counsel for the writ petitioner had brought to my notice the Circular issued by the Co-operative Department as Circular No.55/06 dated 30.11.06. Admittedly in both these cases the loan amount is less than Rs.1 lakh and therefore it is clause No.1 of the Circular that will apply to the facts of these cases. A reading of clause (1) would reveal that when an amount is less than one lakh rupees the amount that can be realized including interest, compound interest etc. etc. should be confined only to the original amount of loan. That is, for example, if Rs.5,000/- is taken as loan, the maximum amount that can be collected by way of interest etc. has to be limited to Rs.5,000/- and not

more than that. As far as WPC 5765/07 is concerned, the amount claimed is Rs.8835.80 of which Rs.6049.80 is the amount due till the date of decree and Rs.2,400/- is the interest due at the rate of 15% from 1.10.97 and Rs.386/- represents the Advocate's fees etc. Though the learned counsel for the writ petitioner wanted to rely clause 2 of Circular No.27/06, the said clause only deal with the penalty, compound interest, interest on interest and miscellaneous expenses. So far as this case is concerned no such amount is included in the execution petition and as the amount is less than 100% of the loan advanced there is no bar in collecting the amount. In view of the Circular issued by the Government(as per Ext.P6 in WPC 5765/07) the said amount has to be paid in 10 equal instalments. Therefore, I direct the writ petitioner to start payment of instalments from 15.10.07 and discharge the entire liability.

2. As far as the other E.P. is concerned the amount claimed is Rs.26,905/-. It is true that the said amount also does not take in the compound interest, interest on interest, penalty etc. But the latest Circular dated 30-11-06 as 55/06 restricts the total amount to be collected only to a maximum of 100% of the amount advanced. In this case, the amount advanced is Rs.10,000/- and therefore the total amount than can be collected under the said Circular can be another Rs.10,000/- thereby making it a total of Rs.20,000/-. Therefore, the judgment debtors are liable to pay Rs.20,000/- in 10 equal instalments and first instalment shall commence from 15.10.07. I make it clear that if there had been any payment towards the decree amount that has to be given credit to and the balance need be deposited in ten monthly instalments. In the event of default of three consecutive instalments the Bank will be entitled to realise

the entire amount in lump sum by resorting to permissible legal methods.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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